KARTAR SINGH v. MAHINDER SINGH

[A. C. J. (Good J.) August 27, 1959]
[Ipoh — Civil Appeal No. 8 of 1958]

Money and Moneylending — Memorandum authenticated by lender — Moneylenders Ordinance, 1951, s.16(1) — Onus on plaintiff to prove compliance with Ordinance.

Section 16(1) of the Moneylenders Ordinance requires the delivery to the borrower of a copy of the memorandum authenticated by the lender or his agent. Authentication requires not merely that a signed copy of the memorandum should be delivered to the borrower but that the lender should endorse upon it something in the nature of a certificate confirming that what the borrower receives is a copy of the original memorandum. There is no prescribed form of authentication, and it will therefore be for the Court to say in the particular circumstances of a case of this kind coming before it whether or not the form of authentication adopted in that particular case is sufficient.

The onus is upon the plaintiff to prove that the requirements of the Ordinance have been complied with. It is not necessary that a copy of the form of authentication on the copy of the memorandum should be placed on the memorandum itself, but there must be evidence that the separate and additional act of authentication was done by the lender in relation to the copy of the memorandum.

Ang Khye Pang v. *Chop Ban Aik* (1) followed.

Case referred to:—

(1) *Ang Khye Pang* v. *Chop Ban Aik* [1939] M.L.J. 282, 285.

CIVIL APPEAL.

N. Sharma for the appellant.
F. C. Arulanandom for the respondent.

Good J.: This is an appeal against the decision of the learned President, Sessions Court, sitting at Tapah in which he gave judgment for the plaintiff in a suit for money lent. The learned President accepted the Plaintiff's evidence that this was a moneylending transaction, and rejected the evidence of the defendant that he was under the mistaken impression that in signing the I.O.U. he was merely signing as a witness to a cattle deal to which the plaintiff was a party. The defendant admitted that he had signed Exhibit P. 1 which is a memorandum under section 16 of the Moneylenders Ordinance, 1951, but denied that he had received a loan from the plaintiff.

I see no reason to go behind the findings of fact of the learned President, and I approach the questions arising in this appeal on the basis of the plaintiff's pleadings and his evidence of the loan and of the execution of the memorandum.

I have come to the conclusion that I need only deal with one of the points raised by the appellant, which is contained in paragraph 5 of the Memorandum of Appeal. Section 16(1) of the Moneylenders Ordinance requires the delivery to the borrower of a copy of the memorandum authenticated by the lender or his agent. Authentication requires not merely that a signed copy of the memorandum should be delivered to the borrower but that the lender should endorse upon it something in the nature of a certificate confirming that what the borrower receives is a copy of the original memorandum. In expressing this opinion, I am following the opinion of McElwaine C.J., in *Ang Khye Pang* v. *Chop Ban Aik*(1). The decision in that case did not turn upon the form of the authentication but upon the fact that it was not signed by the lender. The *dictum* of McElwaine C.J., is therefore *obiter* but I am respectfully in agreement with it. There is no prescribed form of authentication, and it will therefore be for the Court to say in the particular circumstances of a case of this kind coming before it whether or not the form of authentication adopted in that particular case is sufficient.

The onus is upon the plaintiff to prove that the requirements of the Ordinance have been complied with, and there is no evidence of authentication by the respondent in this appeal of the copy of the memorandum delivered to the appellant. In this connection, he says: "A memorandum was prepared as required by law (Exh. P. 1) . . . . . I gave him a copy of it . . . . The defendant acknowledged receipt of the copy of the memorandum by putting his signature on the memorandum . . . One copy of the memorandum was given to the defendant." It is not necessary that a copy of the form of authentication on the copy of the memorandum should be placed on the memorandum itself, but there must be evidence that the separate and additional act of authentication was done by the lender in relation to the copy of the memorandum. In the absence of any such evidence the respondent was precluded from enforcing the contract. In *Ang Khye Pang's* case, *supra*, Terrell J.A. said: "In the case before the Court no authentication has been signed by the lender and accordingly the contract is not enforceable." And Poyser C.J. (F.M.S.) in a concurring judgment said:

> "The authentication clause of 'B1' was not signed by the lender, nor was there anything on the document in the nature of an authentication by the lender. The lender only signed 'B1' at the foot of the copy of the promissory note. The trial Judge held that as 'B1'.
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> 'Contained an exact copy of the contract and bore on its face the signature of both plaintiff and defendant, it was a substantial and adequate compliance with the requirements of section 4, so far as authentication was concerned.'
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> I do not agree; the provisions of the Moneylenders Ordinance must be strictly complied with. There are a number of authorities, both English and local, to this effect, and in this case such provisions were not strictly complied with."

On that ground alone the learned President ought to have dismissed the suit. It is as McElwaine C.J., said in *Ang Khye Pang's* case a "most immeritorious ground", and in this appeal I entertain the same regret which was expressed by Poyser C.J. (F.M.S.) in that case at having to allow the appeal. On the learned President's findings of fact the merits are all with the moneylender but moneylenders must learn the importance of strict compliance with the technical requirements of the Ordinance if they wish to recover their money. The appeal is allowed with costs to the appellant both here and in the Court below.

Appeal allowed.

Solicitors: *N. Sharma; Braddell & Ramani.*